

**I. Bauer Does Not Teach, Nor Would It Have Suggested,
All Of The Features That The Office Action Alleges**

The Office Action, in paragraph 3.2, alleges that the control and monitoring unit of Bauer meets the recitation of a data carrier attached to an article for storing the information of the article as recited in the pending claims. The Office Action then goes on to assert that the distributed information processing module comprising a reading part and storing part that reads data of the data carrier and stores information in the data carrier is also disclosed. Apparently, the Office Action is asserting that the control and monitoring unit of Bauer corresponds to both (1) the data carrier attached to the article and (2) the distribution information processing module for communicating with the data carrier as recited in the pending claims. This is simply too broad a reading of the disclosure of Bauer. The units which comprise the system in Bauer are first a control and monitoring unit 1 having a computer with data and program memories as well as a real time clock which is connected to an input/output unit (see col. 4, lines 40-41 and 49-53). The computer is accessible only to authorized persons by means of an access code (col. 4, line 67 – col. 5, line 2). The second unit of Bauer is an active programmable memory card 2 and the third unit of Bauer is an analysis unit 3. In paragraph 3.2, the Office Action attempts to map portions of these three units somewhat randomly to the structure and/or functions of a data carrier attached to an article for storing the information of the article, a distribution information processing module for reading/storing the information from/in the data carrier, and a distribution information management module for managing the information relative to the distribution of the article.

Claim 1 recites, in very detailed manner (reference letters are added to connote individual units, modules or devices recited in the claim), a distribution information management system having a structure comprising (a) a data carrier attached to an article for storing the information of the article, (b) a distribution information processing module for

reading/storing the information from/in the data carrier, and (c) a distribution information management module for managing the information relative to distribution of the article.

The distribution information processing module (b) is further recited to comprise: (d) a reading part that reads out the data of the data carrier, (e) a storing part that stores the information in the data carrier, (f) a first information verification unit that verifies the information read out from the data carrier, and (g) an information generating unit that processes the information to be stored in the data carrier, wherein the information includes at least a signer identifier that is a receiver identifier of last information stored in the data carrier, and (h) a first communication part that communicates with the distribution information management module. The first information verification unit (f) is further recited to comprise: (i) a first information verification part that verifies the information read out from the data carrier by a verification key, and (j) a first verification key storage part that stores the verification key used by the first information verification part for verification of the information. The information generating unit (g) is further recited to comprise: (k) a distribution information generating part that generates the information to be stored in the data carrier, (l) a signature module that performs signature generating process, (m) a signature key information storage part that stores the signature key information used by the signature module for generating a digital signature, (n) a signature key information selection part that selects a signature key information stored in the signature key storage part, and (o) a signature key information acquisition part that acquires the signature key information from the distribution information management module. The signature module (l) is further recited to comprise: (p) a signature part that generates the digital signature for the information generated by the distribution information generating part, (q) a first signer private information storage part that stores signer private information used by the signature part for generating the

digital signature, and (r) a signature key use limit information storage part that stores a signer key use limit information to indicate whether the signature key information is already used.

The distribution information management module (c) is further recited to comprise:

(s) a second communication part that communicates with the distribution information processing module, (t) a second information verification unit that processes the information received from the distribution information processing module, and (u) a signature key information generating unit that processes the signature key information to be sent to the distribution information processing module. The second information verification unit (t) is further recited to comprise: (v) a second information verification part that verifies the information received from the distribution information processing module, and (w) a second verification key storage part that stores the verification key used by the second information verification part for verification of the information. The signature key information generating unit (u) is further recited to comprise: (x) a signature key information generating part that generates a signature key information used by the distribution information processing module for generating a distribution information, (y) a signature key storage part that stores the signature key used by the signature key information generating part for generating signature key information, (z) a signer private information selection part that selects signer private information used by the signature key information generating part for generating signature key information, and (aa) a second signer private information storage part that stores the signer private information.

The Office Action attempts to map most of these 27 individual elements to corresponding elements alleged to be disclosed in Bauer. This attempt necessarily fails for the following reason. Attempting to mix the structure and function of the separate units of Bauer to find the structure and function of the separate units in the pending claims requires an overly broad reading of Bauer in an attempt to map each of the features recited in the pending

claims to corresponding features disclosed in Bauer. The Office Action randomly seems to group certain of the elements recited in the pending claims. Where even this attempt at element-to-element correspondence fails, the Office Action uses qualifiers, referring to the disclosure of Bauer, such as "substantially discloses" and "suggests using." The Office Action cites Bauer's "memory card" or "programmable card," for example, as allegedly corresponding to a number of the systems and functions recited in claim 1.

The Office Action sweepingly cites numerous paragraphs, *e.g.*, col. 2, line 47 - col. 3, line 35, as disclosing a single or small number of elements that are recited in claim 1. One specific example is where the Office Action at the bottom of page 3 and the top of page 4 asserts that Bauer substantially discloses a memory card for read write access and suggests using access code that meets the recitation of a first information verification unit, the analysis falls apart. The only way that this analysis of the structure in Bauer corresponding to the structure in the pending claims succeeds is through a loose attempt at finding corresponding structural members aided by impermissible hindsight analysis based on Applicants' disclosure. Again, where the analysis cannot find the structure to reasonably correspond, the Office Action liberally sprinkles "suggestions" from Bauer, which also can only be arrived at through inappropriate hindsight reasoning based on Applicants' disclosure.

Applicants' representative attempted to clarify questions regarding the allegedly corresponding structural elements between Bauer and the pending claims with Examiner Colin during the October 6 personal interview. The Examiner was unable to provide any clarification, for example, when asked to clarify to which recited elements or features the control and monitor unit and the memory access card of Bauer were specifically alleged to correspond, or when asked which element disclosed in Bauer was specifically alleged to correspond to the data carrier of the pending claims. The Examiner, in fact, indicated that

because Applicants' interview request did not specify an element-by-element review, that the Examiner was not prepared to address this issue.

**II. Bauer and Sudia Cannot Be Combined In
The Matter That The Office Action Suggests**

Bauer is directed to a system for the control and monitoring of the distribution of goods. The Office Action indicates that Bauer suggests some security with access codes. The Office Action goes on to concede that Bauer does not explicitly disclose a signature generating process that stores signature key information for generating a digital signature. Rather, the Office Action relies on Sudia as teaching such a feature.

The analysis begins with the unsupportable assertion that Sudia "in an analogous art discloses a distribution verification system that is able to sign and verify the signature of the sender." Sudia is directed to a method and apparatus for roaming use of cryptographic values in a multi-step signing system and method that uses multiple signing devices to affix a single signature which can be verified by a single public verification key (Abstract). Specifically, Sudia is directed at providing a digital signing system for certificates and other high valued documents (including contracts, electronic representations of currency, negotiable documents, etc.) with improved security and flexibility (paragraph [006]).

It is hardly conceivable, despite the assertions to the contrary in the Office Action, that one of ordinary skill in the art of goods distribution management at the time this application was written would have combined the teachings of the system for controlling and monitoring distribution of goods of Bauer with the cryptographically-based signing system for electronic documents disclosed in Sudia. Any attempt such as that made in the Office Action to combine these references relies on improper hindsight reasoning based on Applicants' disclosure.

Further, the Office Action, on page 6, in attempting to make a *prima facie* case for obviousness, asserts that it would have been obvious to modify the system of Bauer with the verification process taught by Sudia because one skilled in the art would have been motivated by the suggestions provided by Sudia so as to provide an improved signature verification process that can detect unauthorized verifiers and signers with increased security and flexibility."

MPEP §2143.01 instructs that "[t]he mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination." MPEP §2143.01 further instructs that "[a]lthough a prior art device 'may be capable of being modified to run the way the apparatus is claimed, there must be a suggestion or motivation in the reference to do so.'" *See also In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990). Applicant respectfully submits that the rejection of at least independent claim 1 is improper in view of at least MPEP §2143.01 because the Office Action lacks the required specific evidence of a teaching, suggestion or motivation in the references for one of ordinary skill to combine the references.

There is nothing in Bauer to suggest the multiple layers of security recited in the pending claims. As such, any attempt to combine the applied references is improper on its face. The asserted motivation in the Office Action falls short of meeting the standard for such motivation as is required to make a *prima facie* showing of obviousness.

In response to the above arguments presented during the October 6 personal interview, Examiner Colin indicated that because signature verification is "well known in the art" and Sudia discloses a multi-step signing system, Sudia can be combined with Bauer. This rationale fails to address Applicants' specific arguments, as enumerated above, that Applicants' representative attempted to present during the personal interview.

III. Conclusion

For at least the reasons outlined above, the applied prior art references are not combinable in the manner suggested by the Office Action. Further, any permissible combination of the applied references cannot be reasonably considered to have suggested the combinations of all of the features recited in at least independent claim 1, and as are varyingly recited in like manner in independent claims 18 and 20-27. Additionally, claims 2-17 and 19 are also neither taught, nor would they have been suggested, by the applied references for at least the respective dependence of these claims directly or indirectly on independent claims 1 and 18, as well as for the separately patentable subject matter which each of these claims recites.

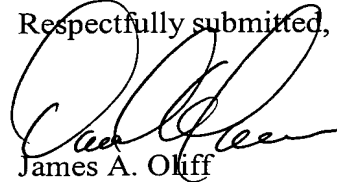
Accordingly, reconsideration and withdrawal of the rejections of claims 1-27 under 35 U.S.C. §103(a) as being unpatentable over the combination of Bauer and Sudia, are respectfully requested.

Further, based on the above noted deficiencies in the analysis in the Office Action, and the inability of the Examiner to reasonably clarify his position, Applicants respectfully request that the finality of the rejection be withdrawn.

In view of the foregoing, Applicants respectfully submit that this application is in condition for allowance. Favorable reconsideration and prompt allowance of claims 1-27 are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact Applicants undersigned representative at the telephone number set forth below.

Respectfully submitted,



James A. Oliff
Registration No. 27,075

Daniel A. Tanner, III
Registration No. 54,734

Attachment:

Petition to Withdraw Holding of Finality of Office Action

JAO:DAT

Date: October 20, 2005

OLIFF & BERRIDGE, PLC
P.O. Box 19928
Alexandria, Virginia 22320
Telephone: (703) 836-6400

<p>DEPOSIT ACCOUNT USE AUTHORIZATION Please grant any extension necessary for entry; Charge any fee due to our Deposit Account No. 15-0461</p>
--